

affirmative : especially considering that, of old, Parliaments were frequent in Scotland, and now are but rare ; and that the Lords of Council and Session were the king's council, to give his Majesty their advice, in general cases, what might legally be done, whether civilly or criminally.

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1667. *December 10.* MR JAMES STRAITON *against* The COUNTESS of HOME.

MR James Straiton, minister of Gordoun, having obtained decret conform, upon an old locality, charges my Lady Home for payment ; who suspends, and alleges, That she must be liberated of a chalder of victual contained in the decret of locality ; because, after the said decret, a part of the parish of Gordoun was dismembered, and erected in a new parish, and the Earl of Home burdened with a new stipend, and the minister of Gordoun liberated of a great part of his charge ; in consideration whereof, the minister, then incumbent, quitted a chalder of his decret of locality, and acquiesced in the rest, without ever demanding any more ; and so did his successors now by the space of sixteen or twenty years. The charger answered, That his predecessors' forbearance to lift that chalder cannot instruct his consent ; and, though he had expressly consented, he could not prejudge his successor, unless that chalder had been applied to the new kirk by sentence of a judge. The Lords found the foresaid reason relevant against the pursuer, *in possessorio*, aye and while he declare his right. Here it was represented, That the minister had a sufficient stipend beside the chalder in question.

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1668. *January 28.* ROBERT DOBBY *against* The LADY STANYHIL, his Mother.

ROBERT Dobby pursues the Lady Stanyhil, his mother, for an aliment, upon this ground, That, she being provided to a plentiful liferent, being an annualrent of 2,800 merks yearly, there remains nothing to aliment him, the heir, of free rent, being all exhausted by the liferent and annualrent of the debt. The defender alleged Absolvitor, because there is no ground in law nor custom for an aliment to the heir, except the rents were exhausted by real burdens by infestment. But here, at the defunct's death, there was only this liferent, which was not the half of the rent, and there was no infestment more. *2dly.* Aliments are only competent to minors : The pursuer is major, and may do for himself. The pursuer answered, That it was alike whether the debts were personal or real ; for, if appraisings had been used, they would all have been real ; but the pursuer did prevent the same, by selling a part of the land at a great rate, which was all applied to the creditors, and yet the liferent and annualrent of the debt is more than the rent. Neither is there any distinction in the law as to majors and minors, who were not bred with a calling ; and therefore Carberry (who was a man of age) got an aliment ; and Anthonia Brown got an aliment from her mother, who had an annualrent in liferent, and the debts were

all personal at her father's death, albeit some of them were apprised for before she got her aliment. The defender answered, That there was a sufficient surplus, because she offered to take the lands, or find sufficient tenants therefor, for 4,300 merks yearly, which was £1000 above her liferent, and would exceed the annualrents of all the debts. The Lords found this last defence relevant; but did not proceed to determine whether an aliment would be due where the burden was but by personal debt.

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1668. *February 7.* The MINISTER of COCKBURNS-PATH *against* His PARISHIONERS.

THE minister of Cockburns-path, having obtained a designation of a horse and two kine's grass, conform to the Act of Parliament 1661, pursues a declarator of his right thereby. It was alleged Absolvitor, Because the designation was null, in respect it was, by the bishop's warrant, directed to three ministers *nominatim*, and it was performed only by two, the third not having come; and a commission to the three must be understood jointly, and not to empower any two of them, unless it had been expressed; likeas the Act of Parliament anent the grass requires the designation of three ministers. The pursuer answered, That, by the Act of Parliament 1661, the designation of grass is appointed to be according to the old standing Acts anent manses and glebes, which do not require three ministers,—that number being only required by the Act of Parliament 1649, which is rescinded, and not revived as to that point; and, seeing three ministers are not necessary, but that two are sufficient, the designation done by two is sufficient. The Lords sustained the designation, unless the defender show weighty reasons of prejudice upon the matter.

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1668. *February 26.* The LAIRD of MILNTOUN *against* The LADY of MILNTOUN.

THE Lady Milntoun, having obtained decret of divorce against John Maxwell, her husband,—the Laird of Milntoun, having right from her husband to her liferent, which right fell by the divorce, pursued a reduction of the decret of divorce; wherein the witnesses being examined and reëxamined, the Lords adhere to the decret of divorce, and assoilyie from the reduction. At which time the Lords having allowed him to insist as in reprobators, he now pursues the same for convelling the testimonies of the witnesses, because they were corrupted and suborned, both by promises and getting of good deed, and being prompted how to swear, as their oath on reëxamination bears: and because their oath is not only suspicious, but impossible; because it is offered to be proven that the parties were *alibi*, at a great distance from the place where the witnesses deponed that they committed adultery, and that for several days and nights thereafter, and before. The defender alleged, That the libel was no ways relevant;